

Decision 12-10-026 October 25, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the Commission's Post-2008 Energy Efficiency Policies, Programs, Evaluation, Measurement, and Verification, and Related Issues.

Rulemaking 09-11-014
(Filed November 20, 2009)

DECISION VACATING DECISION 11-10-014

1. Summary

Today's decision vacates Decision 11-10-014 which addressed the transfer of up to \$155 million from the Gas Consumption Surcharge Fund to the state's General Fund pursuant to Senate Bill 87. The prior funding mechanism, in place prior to Decision 11-10-014, is restored.

2. Background and Discussion

In Decision (D.) 11-10-014 the California Public Utilities Commission provided guidance to Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Gas Company (SoCalGas) (collectively, the IOUs or utilities) regarding priorities and funding mechanisms for these utilities' on going gas Public Purpose Programs (PPP). Commission action was needed because money previously collected from gas ratepayers was subject to transfer to the State's General Fund under legislation enacted during the 2011-2012 fiscal year budget. Among other things, Senate Bill (SB) 87 authorized the transfer of "up to \$155,000,000 from the Gas Consumption

Surcharge Fund" (Fund) to the State's General Fund.¹ If the full amount allowed by SB 87 was transferred, approximately \$21.6 million of the 2011-2012 fiscal year collections in the Fund would have remained. In response, D.11-10-014 addressed, and backstopped with other unspent energy efficiency funds, the potential funding shortage caused by SB 87.

On July 20, 2011, the Natural Resources Defense Council (NRDC) filed a Petition for Alternate Writ of Mandate, Writ of Mandate, Order to Show Cause, or other appropriate relief and Complaint for Declaratory and Injunctive Relief (Petition) in the Superior Court for the State of California. NRDC's Petition alleges that SB 87's transfer provisions violated "the surcharge statute and Constitutional prohibitions on the substantive amendment of existing laws through budget legislation and the diversion of special taxes to general revenue purposes" and undermined programs the State is relying on to provide its citizens with affordable, reliable energy to meet its legal mandates to conserve energy and curb pollution.² By way of relief, the NRDC Petition sought:

- (1) A preemptory writ invalidating the transfer provision as unlawful and unconstitutional and ordering the Controller and Finance Director not to transfer Surcharge Fund money to the General Fund and to return any money already transferred;

¹ SB 87 was chaptered in June 30, 2011.

² NRDC Petition at 2.

- (2) An alternative writ of mandate ordering the Controller and Finance Director not to transfer Surcharge Fund money to the General Fund under the transfer provision and to immediately return any money already transferred;
- (3) A declaration that the transfer provision violates the Surcharge Law and Constitution and that the Controller and Finance Director cannot transfer surcharge Fund money to the General Fund and must immediately return any money already transferred; and
- (4) Preliminary and permanent injunctions preventing the Controller and Finance Director from transferring Surcharge Fund money to the General Fund and requiring them to immediately return any money already transferred.

Prior to any funds being transferred under SB 87, the Superior Court of the State of California determined that the transfers provided for in SB 87 were an invalid attempt to amend the substance of the Surcharge Fund in violation of Article 4, Section 9 of the California Constitution. On October 21, 2011, the California Superior Court granted NRDC's request for a Petition for Writ of Mandate barring the implementation of SB 87. No notice of appeal was filed within the time allowed by statute and the decision of the California Superior Court is now final.³

With the decision of the California Superior Court having become final, the PPP fund transfer authorized by SB 87 cannot be implemented. Therefore, D.11-10-014 no longer has any relevance. As a result, there is no longer any need

³ California Rules of Court, Rules 8.1-8.1125 direct that a notice of appeal must be filed within 60 days of the issuance of a Superior Court decision, or the decision cannot be appealed.

for the guidance regarding PPP priorities and financing that D.11-10-014 provided to the IOUs. We therefore vacate D.11-10-014.⁴

3. Comments of Proposed Decision

The proposed decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on October 11, 2012 by PG&E and jointly by SDG&E and SoCalGas.

4. Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner and Darwin E. Farrar is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In June 2011, the California State legislature enacted SB 87.
2. In response to SB 87, the Commission adopted D.11-10-014 in order to backfill existing PPP programs and give guidance for future funding mechanisms of PPP natural gas programs.
3. On October 21, 2011, the California Superior Court granted NRDC's request for a Petition for Writ of Mandate barring the implementation of SB 87.
4. There is no longer any need for the guidance regarding PPP priorities and financing that D.11-10-014 provided to the IOUs.
5. No notice of appeal of the California Superior Court's decision on the NRDC's petition was filed within the time allowed by statute.
6. The decision of the California Superior Court is now final.

⁴ Among other things, the allocation of funds collected or withheld pursuant to D.11-10-014, and any interest earned thereon, is being addressed in A.12-07-001.

Conclusion of Law

D.11-10-014 should be vacated because the California Supreme Court has determined that SB 87's authorization to transfer money from the Board of Equalization to the State's General Fund violated Article 4, Section 9 of the California Constitution.

O R D E R

IT IS ORDERED that Decision 11-10-014 is vacated.

This order is effective today.

Dated October 25, 2012, at Irvine, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners